

STATE OF MICHIGAN
COURT OF APPEALS

CITY OF ROCKFORD,
Plaintiff-Appellant,

FOR PUBLICATION
December 29, 2009
9:25 a.m.

v

63RD DISTRICT COURT, and 63RD DISTRICT
COURT CHIEF JUDGE,

No. 287501
Kent Circuit Court
LC No. 08-002655-CZ

Defendants-Appellees,
and

KENT COUNTY,

Intervening Defendant-Appellee.

Before: Talbot, P.J., and Wilder and MJ Kelly, JJ.

WILDER, J.

Plaintiff appeals as of right the trial court's order granting the 63rd District Court's and the 63rd District Court Chief Judge Sara Smolenski's (defendants) motion for summary disposition. We affirm.

This action involves the 63rd District Court's planned consolidation of both the first and second divisions of the court into one location in Grand Rapids Township. The 63rd District Court is a district court of the "second-class" and its jurisdiction includes a large portion of Kent County. MCL 600.8130(4). The district is divided into two election divisions and plaintiff city is located in the first division. MCL 600.8251(2) governs the location of district courts of the second-class and provides in relevant part:

the court *shall sit* at any county seat within the district, and at each city and incorporated village within the district having a population of 3,250 or more The court is not required to sit in any political subdivision if the governing body of that subdivision by resolution and the court agree that the court shall not sit in the political subdivision . . . *In addition to the place or places where the court is required to sit pursuant to the provisions of this subsection, the court may sit at a place or places within the district as the judges of the district determine....*
[Emphasis added.]

class “shall sit” in cities with a population of 3,250. Our Supreme Court rejected the plaintiff’s argument that the phrase “shall sit” required the 37th District Court to remain located in Center Line on a full-time basis and held:

If we were to adopt the city’s position, using the 1970 census, we would be creating many “full-time” judge locations in the state where none now are thought to exist. We will not interpret the legislative language to achieve a result that body could not have intended. *The statute does not require a full-time judge in Center Line, only such services of a judge as may, consistent with the judicial needs of the district, be required to transact whatever judicial business is brought in the city.* [*Id.* at 604 (emphasis added).]

In determining which judicial services were required in Center Line, the Supreme Court interpreted and applied the District Court Act. *Id.* at 601, 605, citing MCL 600.8101 *et seq.* The parties agreed that, pursuant to MCL 600.8416,¹ the small claims division of the district court was required to sit in the Center Line “once each 30 days.” *Id.* at 604-605. Furthermore, pursuant to the venue provision in MCL 600.8312(3),² the district court of the third class was also required to sit in Center Line to hear cases involving the violation of Center Line ordinances. *Id.* at 602, 604-607. Under an earlier version of the venue provision in MCL 600.8312(5),³ a district court of the third class was not required to sit in any specific location within the district to hear general civil cases arising out of transactions within Center Line. *Id.* at 605. With regard to “the remaining business of the court,” our Supreme Court affirmed the circuit court’s ruling that these functions could be transacted “at any place within the geographical area of the ... district.” *Id.* at 602, 607.

We conclude that here, consistent with *Center Line*, the trial court properly interpreted MCL 600.8251(2). First, the trial court did not err in determining that the 63rd District Court was not required to maintain a full-time judicial presence in the City of Rockford. *Center Line*, 403 Mich at 604. To “sit” generally means “‘to hold court’ or ‘do any act of a judicial nature.’” *Id.* at 604 n 10. As the trial court noted, reading “shall sit” in context with the entire District Court Act cannot mean district courts are required to hold court full-time in every city with a

¹ In 1978, MCL 600.8416 provided, “The small claims division of the district court shall sit at least once each 30 days at such locations as the district court is required to sit as set forth in section 8251.”

² In 1978, MCL 600.8312(3) provided, “In a district of the third class, venue in criminal actions for violations of state law and all city, village, or township ordinances shall be in the political subdivision thereof where the violation took place, except that when such violation is alleged to have taken place within a political subdivision where the court is not required to sit the action may be tried in any political subdivision within the district where the court is required to sit.”

³ In 1978, MCL 600.8312(5) provided, “In districts of the second or third class venue in civil actions shall be in the district in which the subject of the action is situated, the cause of action arose or in the district in which the defendant is established or resides. If there is more than 1 defendant, actions shall be filed in the district in which any defendant is established or resides.”

“shall sit” in cities with a population of 3,250 or more, it is not required to do so more than once every 30 days.⁴

Third, the trial court did not err when it concluded that, as chief judge of the 63rd District Court, Smolenski had the authority to determine that Servaas would “sit” in Grand Rapids Township. Rockford contends that because Servaas objects to sitting in Grand Rapids Township, MCL 600.8251(2) precludes Smolenski from assigning Servaas to sit outside of his election district. We disagree.

MCL 600.8251(2) provides in relevant part that “in addition to the place or places the district court is required to sit, the court may sit at a place or places within the district as the judges of the district determine.” As we noted earlier, as used in MCL 600.8251(2), to “sit” generally means “to hold court’ or ‘do any act of a judicial nature.” There is no dispute that the 63rd District Court “sits” in Grand Rapids Township, following the agreement of both judges in 1989 that the court would sit in this second location within the district. Importantly, Rockford does not now dispute that the 63rd District Court, *as a court*, properly “sits” in Grand Rapids Township. Because the court properly sits in Grand Rapids Township, we therefore look to MCL 600.8251(4) in order to determine where each of the *judges* in the district will sit. MCL 600.8251(4) provides in pertinent part that “[e]ach judge of the district shall sit at places within *the district* as the presiding judge designates.” (Emphasis added) The trial court correctly concluded that the term “presiding judge” as used in MCL 600.8251(4) is interchangeable with the term “chief judge” used in MCR 8.110. See, MCR 8.110(C)(2). Thus, we conclude that MCL 600.8251(4) vests Smolenski, as chief judge, with the authority to designate the places or court location(s) within the district where Servaas shall sit.⁵

For the foregoing reasons, the trial court did not err in granting defendants’ motion for summary disposition.

Affirmed. A public question being involved in the instant matter, defendants, as prevailing parties, may not tax costs. MCR 7.219(A).

/s/ Kurtis T. Wilder
/s/ Michael J. Talbot
/s/ Michael J. Kelly

⁴ We note that while plaintiff argues on appeal that the trial court failed to consider documents showing that the 63rd District Court does not have plans to offer any services in Rockford, plaintiff waived appellate review of this issue by agreeing with the trial court that the documents were irrelevant to the resolution of this case. *Grant v AAA Michigan/Wisconsin, Inc*, 272 Mich App 142, 149; 724 NW2d 498 (2006).

⁵ See also MCL 600.8261, which states in part that “[c]ourt *facilities* shall be provided at those *places* where the court sits.”